

By



H.B. No. 1865

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS BOARD OF PLUMBING AND MECHANICAL WORK

Art. 9150. TEXAS BOARD OF PLUMBING AND MECHANICAL WORK

Sec. 1. DEFINITIONS. In this article, "board" means the Texas Board of Plumbing and Mechanical Work.

Sec. 2. BOARD. (a) The Texas Board of Plumbing and Mechanical Work consists of:

(1) one member who has not fewer than 10 years of practical experience as a master plumber;

(2) one member who has not fewer than five years of practical experience as a journeyman plumber;

(3) one member who has not fewer than five years' experience as a plumbing contractor;

(4) one member who is a licensed sanitary engineer;

(5) one member who is a building contractor who has not fewer than five years of contracting experience and who must be principally engaged in home building;

(6) one member who is a building contractor who has

1 not fewer than five years of contracting experience and who must be
2 principally engaged in commercial building;

3 (7) one member who has not fewer than five years of
4 practical experience as a plumbing inspector;

5 (8) one member who is a licensed air conditioning and
6 refrigeration contractor;

7 (9) one member who is a licensed irrigator;

8 (10) one member who is a licensed engineer who has
9 mechanical design experience;

10 (11) one member who owns or uses a boiler in this
11 state;

12 (12) one member who is a building official from a city
13 with a population of 250,000 or more; and

14 (13) three members who are representatives of the
15 general public, one of whom must be a person with a disability.

16 (b) Members of the board are appointed by the governor with
17 the advice and consent of the senate.

18 (c) Appointments to the board shall be made without regard
19 to the race, color, disability, sex, religion, age, or national
20 origin of the appointees.

21 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The board
22 annually shall select a presiding officer, assistant presiding
23 officer, and secretary-treasurer.

24 (b) The board shall hold at least two regular meetings each
25 year at which time an examination for a license under a law
26 administered by the board shall be offered. Additional meetings
27 may be held on the call of the presiding officer or at the written

1 request of three members of the board.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day that the member
4 engages in the business of the board. A member may not receive any
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with three members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person is not
14 eligible for appointment as a public member of the board if the
15 person or the person's spouse:

16 (1) is registered, certified, or licensed by an
17 occupational regulatory agency in the field of plumbing or
18 mechanical work;

19 (2) is employed by or participates in the management
20 of a business entity or other organization regulated by the board
21 or receiving funds from the board;

22 (3) owns or controls, directly or indirectly, more
23 than 10 percent interest in a business entity or other organization
24 regulated by the board or receiving funds from the board; or

25 (4) uses or receives a substantial amount of tangible
26 goods, services, or funds from the board, other than compensation
27 or reimbursement authorized by law for board membership,

1 attendance, or expenses.

2 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) An officer,
3 employee, or paid consultant of a Texas trade association in the
4 field of plumbing or mechanical work may not be a member or
5 employee of the board who is exempt from the state's position
6 classification plan or is compensated at or above the amount
7 prescribed by the General Appropriations Act for step 1, salary
8 group 17, of the position classification salary schedule.

9 (b) A person who is the spouse of an officer, manager, or
10 paid consultant of a Texas trade association in the field of
11 plumbing or mechanical work may not be a board member and may not
12 be an employee of the board who is exempt from the state's position
13 classification plan or is compensated at or above the amount
14 prescribed by the General Appropriations Act for step 1, salary
15 group 17, of the position classification salary schedule.

16 (c) For the purposes of this section, a Texas trade
17 association is a nonprofit, cooperative, and voluntarily joined
18 association of business or professional competitors in this state
19 designed to assist its members and its industry or profession in
20 dealing with mutual business or professional problems and in
21 promoting their common interest.

22 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
23 as a member of the board or act as the general counsel to the board
24 if the person is required to register as a lobbyist under Chapter
25 305, Government Code, and its subsequent amendments, because of the
26 person's activities for compensation on behalf of a profession
27 related to the operation of the board.

1 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
2 for removal from the board if a member:

3 (1) does not have at the time of appointment the
4 qualifications required by Section 2 of this article;

5 (2) does not maintain during service on the board the
6 qualifications required by Section 2 of this article;

7 (3) violates a prohibition established by Section 5,
8 6, or 7 of this article;

9 (4) cannot discharge the member's term for a
10 substantial part of the term for which the member is appointed
11 because of illness or disability; or

12 (5) is absent from more than half of the regularly
13 scheduled board meetings that the member is eligible to attend
14 during a calendar year unless the absence is excused by majority
15 vote of the board.

16 (b) The validity of an action of the board is not affected
17 by the fact that it is taken when a ground for removal of a board
18 member exists.

19 (c) If the executive director has knowledge that a potential
20 ground for removal exists, the executive director shall notify the
21 presiding officer of the board of the ground. The presiding
22 officer shall then notify the governor that a potential ground for
23 removal exists.

24 Sec. 9. STAFF. (a) The board shall employ an executive
25 director and administrative and clerical employees as necessary to
26 carry out the board's functions.

27 (b) The board shall develop and implement policies that

1 clearly define the respective responsibilities of the board and the
2 staff of the board.

3 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
4 administer and enforce:

5 (1) The Plumbing License Law (Article 6243-101,
6 Vernon's Texas Civil Statutes) and its subsequent amendments;

7 (2) the law regulating boilers, Chapter 755, Health
8 and Safety Code, and its subsequent amendments;

9 (3) the law regulating water saving performance
10 standards, Chapter 372, Health and Safety Code, and its subsequent
11 amendments;

12 (4) the law regulating septic and sewage disposal
13 systems, Chapter 366, Health and Safety Code, and its subsequent
14 amendments;

15 (5) the law regulating the use of lead in plumbing
16 fixtures, Chapter 346, Health and Safety Code, and its subsequent
17 amendments;

18 (6) the Air Conditioning and Refrigeration Contractor
19 License Law (Article 8861, Vernon's Texas Civil Statutes) and its
20 subsequent amendments; and

21 (7) the law regulating irrigators, Chapter 34, Water
22 Code, and its subsequent amendments.

23 Sec. 11. SEPARATE LICENSES. (a) The board shall issue
24 separate licenses, certificates, permits, or registrations for the
25 programs under Section 10 of this article in which a license,
26 certificate, permit, or registration is issued by the board.

27 (b) The board may issue more than one type of license,

1 certificate, permit, or registration to a person under a law
2 regulated by the board if the person is qualified to hold each of
3 the licenses, certificates, permits, or registrations issued. The
4 board shall adopt rules relating to the issuance of multiple
5 licenses, certificates, permits, or registrations to a person under
6 laws administered by the board.

7 Sec. 12. EXPENDITURES; AUDIT. (a) The board may authorize,
8 from funds appropriated to it, all necessary disbursements to carry
9 out this article and the laws and programs listed in Section 10 of
10 this article.

11 (b) The financial transactions of the board are subject to
12 audit by the state auditor in accordance with Chapter 321,
13 Government Code, and its subsequent amendments.

14 Sec. 13. ANNUAL FINANCIAL REPORT. The board shall file
15 annually with the governor and the presiding officer of each house
16 of the legislature a complete and detailed written report
17 accounting for all funds received and disbursed by the board during
18 the preceding fiscal year. The annual report must be in the form
19 and reported in the time provided by the General Appropriations
20 Act.

21 Sec. 14. PERSONNEL POLICIES. (a) The executive director or
22 the executive director's designee shall develop an intra-agency
23 career ladder program. The program shall require intra-agency
24 posting of all nonentry level positions concurrently with any
25 public posting.

26 (b) The executive director or the executive director's
27 designee shall develop a system of annual performance evaluations

1 based on measurable job tasks. All merit pay for board employees
2 must be based on the system established under this subsection.

3 Sec. 15. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
4 executive director or the executive director's designee shall
5 prepare and maintain a written policy statement to assure
6 implementation of a program of equal employment opportunity under
7 which all personnel transactions are made without regard to race,
8 color, disability, sex, religion, age, or national origin. The
9 policy statement must include:

10 (1) personnel policies, including policies relating to
11 recruitment, evaluation, selection, application, training, and
12 promotion of personnel that are in compliance with the Commission
13 on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes)
14 and its subsequent amendments;

15 (2) a comprehensive analysis of the board workforce
16 that meets federal and state guidelines;

17 (3) procedures by which a determination can be made of
18 significant underuse in the board workforce of all persons for whom
19 federal or state guidelines encourage a more equitable balance; and

20 (4) reasonable methods to appropriately address those
21 areas of underuse.

22 (b) A policy statement prepared under Subsection (a) of this
23 section must cover an annual period, be updated annually, be
24 reviewed by the Commission on Human Rights for compliance with
25 Subsection (a)(1) of this section, and be filed with the governor's
26 office.

27 (c) The governor's office shall deliver a biennial report to

1 the legislature based on the information received under Subsection
2 (b) of this section. The report may be made separately or as part
3 of other biennial reports to the legislature.

4 Sec. 16. PUBLIC INTEREST INFORMATION. (a) The board shall
5 prepare information of public interest describing the functions of
6 the board and the board's procedures by which complaints are filed
7 with and resolved by the board. The board shall make the
8 information available to the public and appropriate state agencies.

9 (b) The board by rule shall establish methods by which
10 consumers and service recipients are notified of the name, mailing
11 address, and telephone number of the board for the purpose of
12 directing complaints to the board. The board may provide for that
13 notification:

14 (1) on each registration form, application, or written
15 contract for services of an individual or entity regulated by the
16 board;

17 (2) on a sign prominently displayed in the place of
18 business of each individual or entity regulated by the board; or

19 (3) in a bill for service provided by an individual or
20 entity regulated by the board.

21 (c) The board shall list along with its regular telephone
22 number the toll-free telephone number that may be called to present
23 a complaint about a health professional if the toll-free number is
24 established under other state law.

25 Sec. 17. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
26 shall develop and implement policies that provide the public with a
27 reasonable opportunity to appear before the board and to speak on

1 any issue under the jurisdiction of the board.

2 Sec. 18. PROGRAM ACCESSIBILITY. The board shall prepare and
3 maintain a written plan that describes how a person who does not
4 speak English can be provided reasonable access to the board's
5 programs. The board shall also comply with federal and state laws
6 for program and facility accessibility.

7 Sec. 19. TRAINING; STANDARDS OF CONDUCT INFORMATION. (a)
8 Each board member shall comply with the board member training
9 requirements established by any other state agency that is given
10 authority to establish the requirements for the board.

11 (b) The board shall provide to its members and employees, as
12 often as necessary, information regarding their qualifications for
13 office or employment under this article and their responsibilities
14 under applicable laws relating to standards of conduct for state
15 officers or employees.

16 Sec. 20. OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE. The
17 board is subject to:

18 (1) the open meetings law, Chapter 271, Acts of the
19 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's
20 Texas Civil Statutes), and its subsequent amendments; and

21 (2) the Administrative Procedure and Texas Register
22 Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its
23 subsequent amendments.

24 Sec. 21. SUNSET PROVISION. The Texas Board of Plumbing and
25 Mechanical Work is subject to Chapter 325, Government Code (Texas
26 Sunset Act), and its subsequent amendments. Unless continued in
27 existence as provided by that chapter, the board is abolished and

1 the following laws expire September 1, 2005:

2 (1) this article;

3 (2) The Plumbing License Law (Article 6243-101,
4 Vernon's Texas Civil Statutes);

5 (3) the law regulating boilers, Chapter 755, Health
6 and Safety Code;

7 (4) the law regulating water saving performance
8 standards, Chapter 372, Health and Safety Code;

9 (5) the law regulating septic and sewage disposal
10 systems, Chapter 366, Health and Safety Code;

11 (6) the law regulating the use of lead in plumbing
12 fixtures, Chapter 346, Health and Safety Code;

13 (7) the Air Conditioning and Refrigeration Contractor
14 License Law (Article 8861, Vernon's Texas Civil Statutes); and

15 (8) the law regulating irrigators, Chapter 34, Water
16 Code.

17 Sec. 22. ADMINISTRATIVE PENALTIES. (a) The board may
18 assess an administrative penalty against a person who violates a
19 provision of this article, a law administered by the board, or a
20 rule or order adopted by the board as provided by this section.

21 (b) The penalty for each violation may be in an amount not
22 to exceed \$1,000. Each day a violation continues or occurs may be
23 considered a separate violation for purposes of penalty assessment.

24 (c) In determining the amount of the penalty, the board
25 shall consider:

26 (1) the seriousness of the violation, including the
27 nature, circumstances, extent, and gravity of the prohibited acts

1 and the hazard or potential hazard posed to the health or safety of
2 the public;

3 (2) the economic damage to property or the environment
4 caused by the violation;

5 (3) the history of previous violations;

6 (4) the amount necessary to deter future violations;

7 (5) efforts to correct the violation; and

8 (6) any other matter that justice may require.

9 (d) If, after investigation of a possible violation and the
10 facts surrounding that possible violation, the board determines
11 that a violation has occurred, the board may issue a violation
12 report stating the facts on which the conclusion that a violation
13 occurred is based, recommending that an administrative penalty
14 under this section be imposed on the person charged, and
15 recommending the amount of that proposed penalty. The board shall
16 base the recommended amount of the proposed penalty on the
17 seriousness of the violation determined by consideration of the
18 factors set forth in Subsection (c) of this section.

19 (e) Not later than the 14th day after the date on which the
20 report is issued, the board shall give written notice of the report
21 to the person charged. The notice shall include a brief summary of
22 the charges, a statement of the amount of the penalty recommended,
23 and a statement of the right of the person charged to a hearing on
24 the occurrence of the violation or the amount of the penalty, or
25 both the occurrence of the violation and the amount of the penalty.

26 (f) Not later than the 20th day after the date on which
27 notice is received, the person charged may accept the determination

1 of the board made under Subsection (d) of this section, including
2 the recommended penalty, or make a written request for a hearing on
3 the determination.

4 (g) If the person charged with the violation accepts the
5 determination of the board, the board shall issue an order
6 approving the determination and ordering the payment of the
7 recommended penalty.

8 (h) If the person charged requests a hearing or fails to
9 timely respond to the notice, the board shall set a hearing and
10 give notice of the hearing. The hearing shall be held by a hearing
11 examiner designated by the board. The hearing examiner shall make
12 findings of fact and conclusions of law and promptly issue to the
13 board a proposal for decision as to the occurrence of the
14 violation, including a recommendation as to the amount of the
15 proposed penalty if a penalty is warranted. Based on the findings
16 of fact, conclusions of law, and recommendations of the hearing
17 examiner, the board by order may find a violation has occurred and
18 may assess a penalty or may find that no violation has occurred.
19 All proceedings under this subsection are subject to the
20 Administrative Procedure and Texas Register Act (Article 6252-13a,
21 Vernon's Texas Civil Statutes) and its subsequent amendments.

22 (i) The board shall give notice of the board's order to the
23 person charged. The notice shall include:

24 (1) the findings of fact and conclusions of law
25 separately stated;

26 (2) the amount of the penalty ordered, if any;

27 (3) a statement of the right of the person charged to

1 judicial review of the board's order, if any; and

2 (4) other information required by law.

3 (j) Within the 30-day period immediately following the day
4 on which the order becomes final as provided by Section 16(c),
5 Administrative Procedure and Texas Register Act (Article 6252-13a,
6 Vernon's Texas Civil Statutes), and its subsequent amendments, the
7 person charged with the penalty shall:

8 (1) pay the penalty in full; or

9 (2) if the person files a petition for judicial review
10 contesting either the amount of the penalty or the fact of the
11 violation or contesting both the fact of the violation and the
12 amount of the penalty:

13 (A) forward the amount to the board for
14 placement in an escrow account; or

15 (B) in lieu of payment into escrow, post with
16 the board a supersedeas bond in a form approved by the board for
17 the amount of the penalty, the bond to be effective until all
18 judicial review of the order or decision is final.

19 (k) If a person charged is financially unable to either
20 forward the amount of the penalty for placement in an escrow
21 account or post a supersedeas bond for the amount of the penalty,
22 the person may satisfy the requirements of Subsection (j)(2) of
23 this section by filing with the board an affidavit sworn by the
24 person charged, stating that the person is financially unable to
25 either forward the amount of the penalty or post a bond.

26 (l) Failure to forward the money to or to post the bond or
27 file the affidavit with the board within the time provided by

1 Subsection (j) of this section results in a waiver of all legal
2 rights to judicial review. Also, if the person charged fails to
3 pay the penalty in full as provided under Subsection (j)(1) of this
4 section or forward the money, post the bond, or file the affidavit
5 as provided by Subsection (j) or (k) of this section, the board may
6 forward the matter to the attorney general for enforcement.

7 (m) Judicial review of the order or decision of the board
8 assessing the penalty shall be under the substantial evidence rule
9 and shall be instituted by filing a petition with a district court
10 in Travis County, as provided by Section 19, Administrative
11 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
12 Civil Statutes), and its subsequent amendments.

13 (n) If the penalty is reduced or not assessed by the court,
14 the board shall remit to the person charged the appropriate amount
15 plus accrued interest if the penalty has been paid or shall execute
16 a release of the bond if a supersedeas bond has been posted. The
17 accrued interest on amounts remitted by the board under this
18 subsection shall be paid at a rate equal to the rate charged on
19 loans to depository institutions by the New York Federal Reserve
20 Bank and shall be paid for the period beginning on the date the
21 penalty is paid to the board under Subsection (j) of this section
22 and ending on the date the penalty is remitted.

23 (o) A penalty collected under this section shall be
24 deposited in the state general revenue fund.

25 Sec. 23. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.
26 The board shall adopt rules that require:

27 (1) a municipality to assume responsibility for

1 compliance with the Americans with Disabilities Act of 1990 (42
2 U.S.C. Section 12101 et seq.) and its subsequent amendments to the
3 extent that Act applies to plumbing and mechanical work regulated
4 by the municipality; and

5 (2) that the administration and enforcement of the
6 laws and programs regulated by the board comply with the Americans
7 with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and
8 its subsequent amendments.

9 Sec. 24. EFFECT OF FEDERAL REGULATIONS. The board shall
10 adopt rules for a law or program regulated by the board as
11 necessary to comply with any federal regulation that imposes
12 standards or requirements on that law or program.

13 SECTION 2. The Plumbing License Law (Article 6243-101,
14 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
15 read as follows:

16 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
17 Act is administered by the Texas Board of Plumbing and Mechanical
18 Work in accordance with Article 9150, Revised Statutes, and its
19 subsequent amendments. To the extent of a conflict between this
20 Act and Article 9150, Revised Statutes, and its subsequent
21 amendments, that article prevails.

22 (b) Any reference in this Act to the Texas State Board of
23 Plumbing Examiners means the Texas Board of Plumbing and Mechanical
24 Work.

25 (c) The Texas State Board of Plumbing Examiners is abolished
26 and the functions of that board are exercised by the Texas Board of
27 Plumbing and Mechanical Work.

SECTION 3. The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is amended by adding Section 8C to read as follows:

Sec. 8C. MEDICAL GAS PIPING INSTALLATION ENDORSEMENT. (a)

A medical gas piping installation endorsement entitles a holder of a master plumber license or journeyman plumber license to install pipe used to transport gases used for medical purposes.

(b) To be eligible for an endorsement under this section,
the license holder must perform satisfactorily on a separate
examination related to the endorsement.

(c) An endorsement under this section is valid for one year and may be renewed annually on or before February 1, or as provided by Section 12A of this Act, in the same manner as a license renewal under Section 12 of this Act.

SECTION 4. Section 13, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. FEES. (a) The Board shall establish fees that are reasonable and necessary to defray the cost of administering [fees ~~for-the-administration-of~~] this Act. [~~in-amounts-not-to-exceed:~~

[Master-Plumber

[Examination \$-75

License 75

[Renewal 75

[Journeyman-Plumber

[Examination 50

[License 50

1	[Renewal	50
2	[Plumbing-Inspector	
3	[Examination	25
4	[License	50
5	[Renewal	50]

6 (b) The Board may ~~[shall]~~ not maintain unnecessary fund
7 balances, and fee amounts shall be set in accordance with this
8 requirement.

9 SECTION 5. Section 14, The Plumbing License Law (Article
10 6243-101, Vernon's Texas Civil Statutes), is amended by amending
11 Subsections (b), (c), and (d) and adding Subsection (e) to read as
12 follows:

13 (b) A person may not install pipe used to transport gases
14 used for medical purposes unless the person:

15 (1) is licensed as a master plumber or journeyman
16 plumber under this Act; and

17 (2) holds an endorsement issued under Section 8C of
18 this Act.

19 (c) An offense under this section is a Class C misdemeanor
20 ~~[as-defined-by-the-Penal-Code]~~.

21 (d) ~~[(e)]~~ In addition to any other action, proceeding, or
22 remedy authorized by law, the Board may institute an action in its
23 own name against any person to enjoin any violation of this Act or
24 any rule of the Board. In order for the Board to sustain the
25 action, it is not necessary to allege or prove either that an
26 adequate remedy at law does not exist or that substantial or
27 irreparable damage would result from the continued violation of

1 this Act or a Board rule. Any party to the action may appeal the
2 cause. The Board may not be required to give any appeal bond in
3 any cause arising under this Act. The attorney general shall
4 represent the Board in all actions and proceedings to enforce this
5 Act.

6 (e) [†d] A field representative or, within the jurisdiction
7 of that municipality, a municipal plumbing inspector or water
8 district plumbing inspector[7] may issue a citation to a person who
9 engages in conduct described by Subsection (e) of Section 9 of this
10 Act.

11 SECTION 6. The Air Conditioning and Refrigeration Contractor
12 License Law (Article 8861, Vernon's Texas Civil Statutes) is
13 amended by adding Section 1A to read as follows:

14. Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

15 (a) This Act is administered by the Texas Board of Plumbing and
16 Mechanical Work in accordance with Article 9150, Revised Statutes,
17 and its subsequent amendments. To the extent of a conflict between
18 this Act and Article 9150, Revised Statutes, and its subsequent
19 amendments, that article prevails.

20 (b) Any reference in this Act to the Texas Department of
21 Licensing and Regulation, the commissioner of licensing and
22 regulation, or the Air Conditioning and Refrigeration Contractors
23 Advisory Board means the Texas Board of Plumbing and Mechanical
24 Work.

25 (c) The Air Conditioning and Refrigeration Contractors
26 Advisory Board is abolished and the functions of that board and the
27 functions, under this Act, of the Texas Department of Licensing and

1 Regulation and the commissioner of licensing and regulation are
2 exercised by the Texas Board of Plumbing and Mechanical Work.

3 SECTION 7. Subtitle A, Title 5, Health and Safety Code, is
4 amended by adding Chapter 346 to read as follows:

5 CHAPTER 346. LEAD IN PLUMBING FIXTURES

6 Sec. 346.001. DEFINITION. In this chapter "board" means the
7 Texas Board of Plumbing and Mechanical Work.

8 Sec. 346.002. RULEMAKING. The board may adopt rules, and
9 may adopt the Uniform Plumbing Code or Southern Standard Building
10 Code, to implement this chapter.

11 Sec. 346.003. USE OF LEAD IN PLUMBING FIXTURES PROHIBITED.

12 (a) A person may not use or cause or permit the use of a faucet,
13 pipe, or pipe fitting that contains more than 8.0 percent lead for
14 installing or repairing:

15 (1) a public water supply; or

16 (2) plumbing that provides water for human consumption
17 and is connected to a public drinking water system.

18 (b) A person may not use or cause or permit the use of
19 solders and flux that contain more than 0.2 percent lead for
20 installing or repairing:

21 (1) a public water supply; or

22 (2) plumbing that provides water for human consumption
23 and is connected to a public drinking water system.

24 (c) The board may adopt rules authorizing the use of lead
25 joints necessary to repair cast-iron pipe.

26 Sec. 346.004. CRIMINAL OFFENSE. (a) A person commits an
27 offense if the person violates Section 346.003 or a rule adopted

1 under this chapter.

2 (b) An offense under this section is punishable by a fine of
3 not less than \$50 or more than \$200.

4 (c) Each violation of Section 346.003 is a separate offense
5 and each day of a continuing violation is a separate offense.

6 Sec. 346.005. ENHANCED CRIMINAL PENALTY. If it is shown on
7 the trial of an offense under Section 346.004 involving a violation
8 of Section 346.003 that the defendant has been convicted of an
9 offense under Section 346.004 for such a violation that occurred
10 during the 12 months preceding the date on which the offense being
11 tried occurred, the offense is punishable by:

12 (1) a fine of not less than \$200 or more than \$1,000;

13 (2) confinement in jail for not more than 30 days; or

14 (3) both a fine and confinement.

15 Sec. 346.006. INJUNCTION; CIVIL PENALTY. (a) If it appears
16 that a person has violated, is violating, or is threatening to
17 violate Section 346.003 or a rule adopted under this chapter, the
18 attorney general at the request of the board, or a county or
19 municipal attorney of the municipality or county in which a
20 violation has occurred, is occurring, or is threatened, may
21 institute a civil suit for:

22 (1) injunctive relief to restrain the person from the
23 violation;

24 (2) the assessment and recovery of a civil penalty for
25 a violation; or

26 (3) both injunctive relief and a civil penalty.

27 (b) The penalty may not exceed \$5,000 a day for each

1 violation. Each day of a continuing violation may be considered a
2 separate violation for the purpose of penalty assessment.

3 (c) The board is an indispensable party in a suit brought by
4 a county or municipal attorney under this section.

5 (d) A suit brought under this section may be brought in the
6 county in which the violation occurred, is occurring, or is
7 threatened, the county in which the defendant resides, or Travis
8 County.

9 (e) A civil penalty recovered in a suit brought by the
10 attorney general under this section shall be deposited in the state
11 treasury to the credit of the general revenue fund. One-half of a
12 civil penalty recovered in a suit brought by a county or municipal
13 attorney under this section shall be deposited in the state
14 treasury to the credit of the general revenue fund and the
15 remaining one-half shall be paid to the county or municipality that
16 brought the suit.

17 (f) In a suit under this section, the court may grant, after
18 notice and hearing, the board, the county, or municipality any
19 injunctive relief warranted by the facts, including a temporary
20 restraining order, temporary injunction, or permanent injunction.
21 The court may not require the board or the county or municipality
22 to provide a bond or other undertaking in connection with the
23 request for injunctive relief.

24 SECTION 8. Subchapter A, Chapter 366, Health and Safety
25 Code, is amended by adding Section 366.0001 to read as follows:

26 Sec. 366.0001. FUNCTIONS TRANSFERRED. (a) This chapter is
27 administered by the Texas Board of Plumbing and Mechanical Work in

1 accordance with Article 9150, Revised Statutes, and its subsequent
2 amendments. To the extent of a conflict between this chapter and
3 Article 9150, Revised Statutes, and its subsequent amendments, that
4 article prevails.

5 (b) Any reference in this chapter to the Texas Natural
6 Resource Conservation Commission means the Texas Board of Plumbing
7 and Mechanical Work.

8 SECTION 9. Chapter 372, Health and Safety Code, is amended
9 by adding Section 372.0001 to read as follows:

10 Sec. 372.0001. FUNCTIONS TRANSFERRED. (a) This chapter is
11 administered by the Texas Board of Plumbing and Mechanical Work in
12 accordance with Article 9150, Revised Statutes, and its subsequent
13 amendments. To the extent of a conflict between this chapter and
14 Article 9150, Revised Statutes, and its subsequent amendments, that
15 article prevails.

16 (b) Any reference in this chapter to the Texas Natural
17 Resource Conservation Commission means the Texas Board of Plumbing
18 and Mechanical Work.

19 SECTION 10. Subchapter A, Chapter 755, Health and Safety
20 Code, is amended by adding Section 755.002 to read as follows:

21 Sec. 755.002. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a)
22 This chapter is administered by the Texas Board of Plumbing and
23 Mechanical Work in accordance with Article 9150, Revised Statutes,
24 and its subsequent amendments. To the extent of a conflict between
25 this chapter and Article 9150, Revised Statutes, and its subsequent
26 amendments, that article prevails.

27 (b) Any reference in this chapter to the Texas Department of

1 Licensing and Regulation, the commissioner of licensing and
2 regulation, or the Board of Boiler Rules means the Texas Board of
3 Plumbing and Mechanical Work.

4 (c) The Board of Boiler Rules is abolished and the functions
5 of that board and the functions, under this chapter, of the Texas
6 Department of Licensing and Regulation and the commissioner of
7 licensing and regulation are exercised by the Texas Board of
8 Plumbing and Mechanical Work.

9 SECTION 11. Chapter 34, Water Code, is amended by adding
10 Section 34.0001 to read as follows:

11 Sec. 34.0001. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED. (a)
12 This chapter is administered by the Texas Board of Plumbing and
13 Mechanical Work in accordance with Article 9150, Revised Statutes,
14 and its subsequent amendments. To the extent of a conflict between
15 this chapter and Article 9150, Revised Statutes, and its subsequent
16 amendments, that article prevails.

17 (b) Any reference in this chapter to the Texas Natural
18 Resource Conservation Commission or the Texas irrigators advisory
19 council means the Texas Board of Plumbing and Mechanical Work.

20 (c) The Texas irrigators advisory council is abolished and
21 the functions of that board and the functions, under this chapter,
22 of the Texas Natural Resource Conservation Commission are exercised
23 by the Texas Board of Plumbing and Mechanical Work.

24 SECTION 12. (a) As soon as possible after the effective
25 date of this Act, the governor shall appoint the initial members of
26 the Texas Board of Plumbing and Mechanical Work in accordance with
27 Article 9150, Revised Statutes, as added by this Act. In making

1 the initial appointments, the governor shall designate members to
2 serve terms as follows:

3 (1) one master plumber member, one sanitary engineer
4 member, one plumbing inspector member, one irrigator member, and
5 one public member serve for terms expiring February 1, 1995;

6 (2) one journeyman plumber member, one building
7 contractor member, one air conditioning and refrigeration
8 contractor member, one engineer member, and one public member serve
9 for terms expiring February 1, 1997; and

10 (3) one plumbing contractor member, one building
11 contractor member, one boiler owner or operator member, one
12 building official member, and one public member serve for terms
13 expiring February 1, 1999.

14 (b) The Texas Board of Plumbing and Mechanical Work may not
15 take any action and is not created until the day after the date
16 that the last appointee to the initial board takes office. On the
17 date of its creation, the board assumes its functions and:

18 (1) the Air Conditioning and Refrigeration Contractors
19 Advisory Board, Texas State Board of Plumbing Examiners, Board of
20 Boiler Rules, and Texas irrigators advisory council are abolished;

21 (2) the obligations, rights, contracts, records and
22 other property, and personnel of, and unspent money appropriated to
23 or for, the abolished boards and council or the governing body for
24 the laws or programs transferred to the new board under this Act
25 are transferred to the Texas Board of Plumbing and Mechanical Work;

26 (3) the rules of the abolished boards and council or
27 the governing body for the laws or programs transferred to the new

1 board under this Act are continued in effect as rules of the Texas
2 Board of Plumbing and Mechanical Work until superseded by rule of
3 the new board;

4 (4) the licenses, certificates, permits, or
5 registrations in effect that were issued by the abolished boards or
6 council or the governing body for the laws or programs transferred
7 to the new board under this Act are continued in effect as
8 licenses, certificates, permits, or registrations of the Texas
9 Board of Plumbing and Mechanical Work;

10 (5) a complaint or investigation pending before the
11 abolished boards or council or the governing body for the laws or
12 programs transferred to the new board under this Act is transferred
13 without change in status to the Texas Board of Plumbing and
14 Mechanical Work;

15 (6) a contested case pending before the abolished
16 boards and council or the governing body for the laws or programs
17 transferred to the new board under this Act is transferred to the
18 Texas Board of Plumbing and Mechanical Work and actions taken in
19 the proceeding are treated as if taken by the Texas Board of
20 Plumbing and Mechanical Work; and

21 (7) any reference in a law to the abolished boards or
22 council means the Texas Board of Plumbing and Mechanical Work.

23 (c) Regardless of the changes in law made by this Act, until
24 the date that the Air Conditioning and Refrigeration Contractors
25 Advisory Board, Texas State Board of Plumbing Examiners, Board of
26 Boiler Rules, and Texas irrigators advisory council are abolished
27 as provided by this section, the boards and council continue in

1 existence and shall administer their functions under the law that
2 governed the boards and council before the effective date of this
3 Act, and the prior law is continued in effect for that purpose.

4 (d) The Texas Board of Plumbing and Mechanical Work shall
5 adopt rules under this Act not later than December 1, 1993.

6 SECTION 13. A person who engages in the installation of
7 medical gas piping is not required to obtain an endorsement under
8 this Act until February 1, 1994.

9 SECTION 14. The following laws are repealed:

10 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
11 Law (Article 6243-101, Vernon's Texas Civil Statutes);

12 (2) Subchapter B, Chapter 755, Health and Safety Code;

13 (3) Section 3A, Air Conditioning and Refrigeration
14 Contractor License Law (Article 8861, Vernon's Texas Civil
15 Statutes); and

16 (4) Sections 34.003 and 34.011, Water Code.

17 SECTION 15. This Act takes effect September 1, 1993.

18 SECTION 16. The importance of this legislation and the
19 crowded condition of the calendars in both houses create an
20 emergency and an imperative public necessity that the
21 constitutional rule requiring bills to be read on three several
22 days in each house be suspended, and this rule is hereby suspended.

H. B. No.

By

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

MAR 10 1993

MAR 11 1993

- 1. Filed with the Chief Clerk.**

- 2. Read first time and Referred to Committee on**

LICENSING & ADMINISTRATIVE PROCEDURES

3. Reported ____ favorably (as amended) and sent to Printer at ____
(as substituted)

4. Printed and distributed at _____

5. Sent to Committee on Calendars at _____

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ years, _____ days, _____ present, not voting).

- 10. Caption ordered amended to conform to body of bill.**

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

- 12. Ordered Engrossed at** _____

- 13. Engrossed.**

14. Returned to Chief Clerk at _____

- 15. Sent to Senate.**

Chief Clerk of the House

- ## 16. Received from the House

17. Read, referred to Committee on _____

- 18. Reported favorably**

- 19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.**

- 20. Ordered not printed.**

21. Regular order of business suspended by _____
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) (Substitute) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

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